

# HOUSE . . . . . No. 1238

By Mr. Fennell of Lynn, petition of Robert F. Fennell and others for legislation to establish the North Shore Community College assistance corporation. Higher Education.

## The Commonwealth of Massachusetts

### PETITION OF:

Robert F. Fennell  
Steven M. Walsh

Thomas M. McGee

In the Year Two Thousand and Five.

### AN ACT ESTABLISHING THE NORTH SHORE COMMUNITY ASSISTANCE BOARD.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Section 1. It is hereby found and declared that:

2 (1) the North Shore Community College is a critical element of  
3 the commonwealth's higher education system and fulfilling the  
4 mission of North Shore community college to provide educational  
5 resources to the citizens of the commonwealth is essential to pro-  
6 viding students with skills and opportunities necessary to a full  
7 and protective life.

8 (2) Providing physical and financial resources necessary to  
9 meet the needs of the North Shore community college now and in  
10 the future is critical to the ability of North Shore community col-  
11 lege to fulfill its mission including providing the work force with  
12 skills necessary to allow for the maintenance and expansion of the  
13 industrial, technological and manufacturing sectors of the com-  
14 monwealth's economy.

15 (3) Creation of a nonprofit assistance corporation with certain  
16 statutory authority would provide a vehicle with the necessary  
17 flexibility to prudently pursue such opportunities for the benefit of  
18 North Shore community college.

19 (4) It is therefore expressly declared that the provisions of this  
20 section constitute a needed program in the public interest in fur-  
21 therance of an essential governmental function and serve a neces-  
22 sary and valid public purpose for which public money may be  
23 expended or invested.

24 (b) As used in this section the following terms shall, unless oth-  
25 erwise required, have the following meanings:

26 “board of directors”, board of directors of the North Shore  
27 community assistance corporation;

28 “board of trustees”, board of trustees of the North Shore com-  
29 munity college “college”, North Shore community college or,  
30 should North Shore community college be dissolved or fail to  
31 qualify either as a political subdivision of the commonwealth or  
32 an educational institution exempt from federal income tax under  
33 Section 501 c(3) of the Code, then such other educational institu-  
34 tion of higher learning established and operating in the common-  
35 wealth as shall be designated by the council, which is either such  
36 a political subdivision or such an exempt organization;

37 “Code”, the Internal Revenue Code of 1986, as the same may,  
38 from time to time, be amended;

39 “corporation”. North Shore community college assistance cor-  
40 poration created by subsection c;

41 “the council”. the higher education coordinating council estab-  
42 lished pursuant to section four of chapter fifteen A of the General  
43 Laws;

44 “educational institution”, an educational institution”, an educa-  
45 tional organization within the meaning of section 170 (1)(b)(A)(ii)  
46 of the code;

47 (c) (1). There is hereby created a body politic and corporate to  
48 be known as the North Shore community college assistance corpo-  
49 ration. The corporation is not and shall deemed a public agency  
50 or state agency within the meaning of such terms in chapter seven  
51 of the General Laws for any purposes.

52 (2). The corporation shall be governed by a board of fifteen  
53 directors, one of whom shall be the state senator from the third  
54 Essex and Middlesex district, one of whom shall be the represen-  
55 tative from the tenth Essex district, one of whom shall be the rep-  
56 resentative from the eleventh Essex district, one of whom shall be  
57 the chairman of the trustees of North Shore Community College,

58 one of whom shall be the president of the Lynn City Council, one  
59 of whom shall be the director of the Lynn Economic Development  
60 Industrial Corporation, three of whom shall be appointed by the  
61 governor, one of whom shall be the President of the college ex  
62 officio, one of whom shall be the mayor of the city of Lynn, ex  
63 officio, one of whom shall be appointed by the Lynn Chamber of  
64 commerce, three of whom shall be appointed by the President of  
65 the college.

66 (3) Directors shall serve for a term of three years provided,  
67 however, of those initially appointed by the board two shall be  
68 appointed for one year, and one for two years, and of those ini-  
69 tially appointed by the governor one shall be appointed for one  
70 year and one for two years and the individuals appointed by the  
71 President of the college shall be appointed for two years. Vacan-  
72 cies arising from other than the expiration of the term shall be  
73 filled by the party responsible for the initial appointment. Direc-  
74 tors shall serve without compensation but may be reimbursed for  
75 expenses necessarily incurred in the performance of their duties.

76 The directors from time to time shall elect from among them-  
77 selves a chairman, a vice chairman and a secretary. The secretary  
78 shall be the custodian of all books, documents and papers of the  
79 corporation and its minute book and seal. Unless otherwise pro-  
80 vided in by-laws adopted by the board of directors, the number of  
81 directors required to constitute a quorum shall be a majority of the  
82 directors then in office. If a quorum is present, a majority of the  
83 directors may take any action on behalf of the board of directors  
84 except to the extent that a larger number is required by this  
85 section, other applicable laws or by-laws adopted by the board of  
86 directors.

87 The purposes of the corporation shall be to (i) promote the  
88 orderly growth and development of the college; (ii) to assist the  
89 college in securing physical and financial Resources necessary for  
90 the acquisition and development of the site.

91 A. to make and execute contracts and any other instruments  
92 necessary or convenient for the exercise of its powers or the dis-  
93 charge of its duties and incur liabilities for any other purposes of  
94 the corporation;

95 B. To have a corporate seal which it may alter at its pleasure;

96 C. To adopt by-laws for the regulation of its affairs;

97 D. To accept, acquire, receive, take, and hold by bequest,  
98 devise, grant, gift, purchase, exchange, lease, transfer, judicial  
99 order or decree or otherwise, for any of its objects and purposes,  
100 any property both real and personal reasonably related to the  
101 acquisition and development of the site;

102 E. To sue or be sued, provided, however, a director or officer of  
103 the corporation shall not be liable for the performance of his  
104 duties if he acts in compliance with section six C of chapter one  
105 hundred and eighty of the General Laws;

106 F. To sell, convey, mortgage, lease, transfer, exchange or other-  
107 wise dispose of any such property, both real and personal, as the  
108 objects and purposes of the corporation may require;

109 G. To borrow money, and from time to time, to make, accept,  
110 endorse, execute, and issue promissory notes, bills of exchange,  
111 and other obligations of the corporation for monies borrowed or in  
112 payment for property acquired or for any of the other purposes of  
113 the corporation, and to secure the payment of any such obligation  
114 by mortgage, pledge, deed, agreement, or other instrument of  
115 trust, or other lien upon, assignment of, or agreement in regard to  
116 all or any part of the property rights or privileges of the corpora-  
117 tion, whether now owned or hereafter to be acquired;

118 H. To receive stocks, bonds, donations, gifts and to otherwise  
119 raise money for the corporation's purposes;

120 I. To elect, appoint and employ officers, agents and employees;  
121 to fix their compensation and define their duties and obligations  
122 and to indemnify corporate personnel;

123 J. To enter into agreements for other transactions with any  
124 person, including without limitation, any governmental instrumen-  
125 talities or agencies in connection with any of its powers or duties  
126 and any governmental agency is hereby authorized to enter into  
127 such agreements or transactions with the corporation;

128 K. To do all acts and things necessary or convenient to the  
129 exercise of any power or the discharge of any duty provided for  
130 by this section.

131 (d) The corporation is hereby deemed to be an "institution for  
132 higher education" solely for the purposes such term is used in  
133 chapter six hundred and fourteen of the acts of nineteen hundred  
134 and sixty-eight. Any acquisition of property by purchase, lease,  
135 or other method by the corporation shall be deemed a "project" as

136 such term is used in chapter six hundred and fourteen of the acts  
137 of nineteen hundred and sixty-eight. The corporation shall be  
138 fully eligible to receive any and all assistance from the Massachu-  
139 setts health and education facilities authority created by chapter  
140 six hundred and fourteen of the acts of nineteen hundred and  
141 sixty-eight in the same manner as any institution for higher educa-  
142 tion.

143 (e) The corporation shall assess the space needs of the college  
144 on a regular basis and shall lease or rent land or space in any  
145 facility under the control of the corporation to any entities other  
146 than the college only after making a determination that the college  
147 does not have a foreseeable need for such space or land for the  
148 term of the lease or rental agreement.

149 In no event shall the corporation sell, convey, transfer,  
150 exchange or otherwise dispose of any real property without noti-  
151 fying in writing and consulting with the board of trustees and the  
152 council, and after such consultation making a determination that  
153 such sale, conveyance, transfer or exchange is in the best interests  
154 of the college. Any such sale, conveyance, transfer or exchange  
155 shall require a vote of two-thirds of the members of the board of  
156 directors.

157 (g) The college or any state agency or entity acting on the col-  
158 lege's behalf, may enter into an agreement to rent, lease or other-  
159 wise utilize any facility owned by, or under the control of the  
160 corporation. The corporation shall be paid rent and costs for such  
161 facilities at a rate agreed to by the corporation and college or state  
162 agency or entity entering into an agreement on the college's  
163 behalf, provided that such amount may not exceed the fair market  
164 value for the use of such facilities at the time the agreement is  
165 made. Subject to this limitation, the college's determination to  
166 rent, lease or otherwise utilize any facility owned or under the  
167 control of the corporation and any agreement related thereto shall  
168 not be subject to chapter seven of the General Laws.

169 (h) The corporation shall not have the authority to engage in  
170 any activities which are not in furtherance of its corporate pur-  
171 poses or to support or benefit any organization other than the col-  
172 lege, and all of the powers granted under this section to the  
173 corporation shall be exercised in a manner consistent therewith.

174 Notwithstanding any other provision herein contained, neither  
175 the directors and officers of the corporation nor the corporation  
176 shall participate in any “prohibited transaction” within the  
177 meaning of Section 503 of the Code, nor shall the corporation be  
178 operated at any time for the primary purpose of carrying on a  
179 trade or business for profit.

180 Subject to the other provisions of this section, the corporation  
181 shall use and/or distribute all property from time to time held by  
182 the corporation solely in the furtherance of its corporate purposes  
183 in such manner as the board of directors shall determine, no part  
184 of the assets or net earnings, if any, of the corporation shall inure  
185 to the benefit of, or be distributable to, its directors, its officers or  
186 any private individual, except that the corporation shall be autho-  
187 rized and empowered to pay reasonable compensation for services  
188 rendered and to make payments and distributions in furtherance of  
189 its corporate purposes; and the corporation shall not directly or  
190 indirectly participate in or intervene in (including the publishing  
191 or distributing of statements) any political campaign on behalf of  
192 or in opposition to any candidate for public office, and no substan-  
193 tial part of the activities of the corporation shall be carrying on of  
194 propaganda, or otherwise attempting to influence legislation  
195 (except to the extent the corporation makes expenditures for pur-  
196 poses of influencing legislation in conformity with the require-  
197 ments of Section 501 (h) of the Code). If the corporation is  
198 deemed to be a private foundation as defined in Section 509 of the  
199 Code, the provisions of chapter sixty-eight A of the General Laws  
200 shall apply to it.

201 (i) The operation and maintenance of projects by the corpora-  
202 tion shall constitute the performance of an essential governmental  
203 function, and the corporation shall not be required to pay any  
204 taxes or special, betterment or other assessments within the com-  
205 monwealth, including, without limitation, taxes on real or per-  
206 sonal property and any ad valorem taxes, upon any property  
207 owned, constructed, acquired, leased or used by it under the provi-  
208 sions of this section. The corporation shall not be subject to any  
209 taxes based upon or measured by income which may be enacted  
210 by the commonwealth. Obligations issued by the corporation  
211 under this section, and any income derived therefrom, including

212 any sale, exchange or transfer of such obligation, shall at all times  
213 be free from taxation within the commonwealth.

214 Land, buildings and tangible personal property of the corpora-  
215 tion, if leased to the extent permitted pursuant to this section for  
216 any activity or transaction entered into by the lessee for financial  
217 profit or gain shall be taxed or assessed by the city or town in  
218 which such land, buildings and tangible personal property may be  
219 situated to the lessees thereof respectively, in the same manner as  
220 such land, buildings and tangible personal property would be  
221 taxes or assessed to such lessees if they were owners thereof,  
222 except as follows:

223 (1) the payment of the tax or assessment shall not be enforced  
224 by any lien upon or sale of such land or buildings, but for the pur-  
225 pose of enforcing the payment of such taxes or assessments by  
226 such lessees to the city or town in the manner provided by law for  
227 selling real estate for the nonpayment of real estate taxes.

228 (2) such land, buildings and tangible personal property leased  
229 to any political subdivision of the commonwealth or to any public  
230 charity described in section eight of chapter twelve of the General  
231 Laws for its charitable purposes shall not be taxes or assessed to  
232 any such lessees.

233 (3) that in lieu of taxes, and any betterment of special assess-  
234 ments, the city of Lynn may determine a sum to be paid to it annu-  
235 ally in any year or period or years, such sum to be in any year  
236 equal to or less than the amount that would be levied at the then  
237 current tax rate upon the then current assessed value of such real  
238 estate, including buildings and other structures, the valuation for  
239 each year being reduced by all abatements thereon. In no event  
240 however, shall any amount be due prior to the first year in which  
241 the corporation has leased some portion of the real property to a  
242 third party and has received rental payments for fees in return  
243 therefore and any amount so due shall be prorated based upon the  
244 percentage of the property for which rental payments or fees have  
245 been received.

246 If any such lessee is subject to the excise levied under the pro-  
247 visions of sections thirty to forty-two B, inclusive, chapter sixty-  
248 three of the General Laws, such tangible personal property shall  
249 be treated as though it were owned by such lessee for the purposes  
250 of such excise, and it shall be valued at eight times its annual

251 rental rate, unless and to the extent that such property is treated by  
252 the lessee as owned by it for federal income tax purposes, in  
253 which case its value shall be its adjusted basis, as defined in the  
254 applicable provisions of the Code.

255 All tangible property, real or personal, so leased shall be con-  
256 sidered tangible property owned or rented and used in the com-  
257 monwealth by such lessee for the purposes of section thirty-eight  
258 of chapter sixty-three of the General Laws.

259 (i) Upon or dissolution of the corporation after payment of all  
260 of the corporation or due provision therefore, all of the assets of  
261 the corporation shall be distributed to the council to be held in  
262 trust for the benefit of or be distributed to any private individual.

263 (j) None of the powers, duties, actions, responsibilities, or  
264 authorities of whatever kind or nature which are vested or created  
265 in the corporation or college by this section, either explicitly or  
266 implicitly shall be legally valid nor may said powers, duties,  
267 actions, responsibilities, or authorities be exercised in the absence  
268 of review and comment by the inspector general of the common-  
269 wealth of the propriety of any of any proposed action and further  
270 specific legislative authorization.

271 (k) The provisions of this act are severable, and if any of its  
272 provisions shall be held unconstitutional by any court of compe-  
273 tent jurisdiction, the decision of such court shall not affect or  
274 impair any of the remaining provisions.